



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1646/D1
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LRMR

already
willing in computer

DOA:.....Gauger - Restrictions on smoking

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

Current law prohibits smoking in mass transit vehicles and specific enclosed, indoor locations, including the following:

1. Inpatient health care facilities, such as community based-residential facilities and nursing homes.
2. Prisons and jails.
3. Retail establishments.
4. Restaurants.
5. Governmental buildings.

Except for hospitals, school buses, day care centers where children are present, and a few other places, a smoking area may be designated by the person who is in charge of that location. For example, the person in charge of a business is the owner of the business and the person in charge of a prison is the state secretary of corrections.

Under the bill, smoking areas at indoor locations may no longer be designated resulting in a complete ban on indoor smoking at those locations with exceptions for private residences, a limited number of designated rooms in lodging establishments, and certain residence rooms in assisted living facilities. In addition to the specific indoor locations listed under current law, the bill prohibits smoking in any public

place or place of employment. The bill defines "a place of employment" to be any indoor place that employees normally frequent during the course of employment, such as an office, a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The bill also defines a "public place" to be a place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited. In addition, the bill defines an "enclosed place" for purposes of determining at what locations smoking is prohibited. An enclosed place must have a roof and at least two walls.

Current law provides exemptions from the prohibition against smoking for bowling centers, taverns, halls used for private functions, rooms in which the main occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exemptions.

Current law allows smoking in any restaurant that has a seating capacity of 50 individuals or less, or that holds a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant's receipts. This bill prohibits smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license issued by a municipality. This bill prohibits smoking in any tavern. The bill also specifically prohibits smoking in private clubs.

Under current law, smoking is prohibited outside in limited instances. These include within a certain distance of the state capitol building, dormitories that are owned or operated by the University of Wisconsin, and day care centers where children are present. This bill makes no changes to these specific prohibitions, and adds a general prohibition against smoking outside within less than a reasonable distance from any entrance into a building, an openable window, or a ventilation opening that draws air inside.

The bill also specifically prohibits smoking in sports arenas and bus shelters, regardless of whether they meet the definition of "enclosed place."

Current law does not limit the authority of any county, city, village, or town to enact smoking ordinances that protect the public's health and comfort. This bill makes no change in this provision.

This bill requires that persons in charge of places where smoking is prohibited enforce the prohibitions by taking certain steps to ensure compliance, such as asking the person to leave or refusing to serve the person if the place is a restaurant or tavern. This bill imposes forfeitures on persons in charge who fail to take these measures.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:

2 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
3 hospitals but not in residential facilities including personal residences, apartments,
4 long-term care facilities, as defined under s. 16.009 (1) (em), ~~state institutions, as~~
5 ~~defined under s. 101.123 (1) (i) prisons, mental health institutes, as defined in s.~~
6 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
7 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities
8 including, by way of illustration but not of limitation, all of the following:

9 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

10 **SECTION 3.** 101.123 (1) (ab) of the statutes is created to read:

11 101.123 (1) (ab) “Assisted living facility” means a community-based
12 residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,
13 as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

14 **SECTION 4.** 101.123 (1) (ac) of the statutes is created to read:

15 101.123 (1) (ac) “Correctional facility” means any of the following:

16 1. A state prison, as defined or named in s. 302.01, except a correctional
17 institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner’s
18 place of residence and no one is employed there to ensure the prisoner’s
19 incarceration.

20 2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile
21 correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional
22 facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility
23 is a private residence in which the juvenile is placed and no one is employed there
24 to ensure that the juvenile remains in custody.

1 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work
2 camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under
3 s. 302.30.

4 **SECTION 5.** 101.123 (1) (aj) of the statutes is created to read:

5 101.123 (1) (aj) Notwithstanding s. 101.01 (5), “employment” means any trade,
6 occupation, or process of manufacture or any method of carrying on such trade,
7 occupation, or process of manufacture in which any person may be engaged.

8 **SECTION 6.** 101.123 (1) (ak) of the statutes is created to read:

9 101.123 (1) (ak) “Enclosed place” means a structure or area that has all of the
10 following:

- 11 1. A roof or overhead covering.
- 12 2. Two or more substantial walls, regardless of whether the walls are removed
13 and replaced on a temporary basis.

14 **SECTION 7.** 101.123 (1) (am) of the statutes is repealed.

15 **SECTION 8.** 101.123 (1) (ar) of the statutes is amended to read:

16 101.123 (1) (ar) “Immediate vicinity of the state capitol” means the area
17 directly adjacent to the state capitol building, as determined by rule of the
18 department of administration. “Immediate vicinity of the state capitol” does not
19 include any location that is more than ~~one fathom~~ six feet from the state capitol
20 building.

21 **SECTION 9.** 101.123 (1) (b) of the statutes is amended to read:

22 101.123 (1) (b) “Inpatient health care facility” means a hospital, as defined in
23 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established
24 under s. 49.72 ~~or a community-based residential facility or, a nursing home licensed~~

1 under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a
2 Wisconsin veteran's home under s. 45.50, or a treatment facility.

3 **SECTION 10.** 101.123 (1) (bg) of the statutes is repealed.

4 **SECTION 11.** 101.123 (1) (bm) of the statutes is repealed.

5 **SECTION 12.** 101.123 (1) (bn) of the statutes is created to read:

6 101.123 (1) (bn) "Lodging establishment" means any of the following:

- 7 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
- 8 2. A hotel, as defined in s. 254.61 (3).
- 9 3. A tourist rooming house, as defined in s. 254.61 (6).

10 **SECTION 13.** 101.123 (1) (br) of the statutes is repealed.

11 **SECTION 14.** 101.123 (1) (c) of the statutes is repealed.

12 **SECTION 15.** 101.123 (1) (d) of the statutes is amended to read:

13 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
14 ultimately controls, governs or directs the activities aboard a public conveyance or
15 ~~within a place at a location~~ where smoking is prohibited or regulated under this
16 section, ~~regardless of the person's status as owner or lessee.~~

17 **SECTION 16.** 101.123 (1) (dg) of the statutes is repealed.

18 **SECTION 17.** 101.123 (1) (dj) of the statutes is created to read:

19 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
20 any enclosed place that employees normally frequent during the course of
21 employment, including an office, a work area, an elevator, an employee lounge, a
22 restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a
23 lobby, a common area, a vehicle, or an employee cafeteria.

24 **SECTION 18.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

25 **SECTION 19.** 101.123 (1) (dn) of the statutes is created to read:

1 101.123 (1) (dn) "Private club" means a facility used by an organization that
2 limits its membership and is organized for a recreational, fraternal, social, patriotic,
3 political, benevolent, or athletic purpose.

4 **SECTION 20.** 101.123 (1) (e) of the statutes is amended to read:

5 101.123 (1) (e) "Public conveyance" means a mass transit vehicles vehicle as
6 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
7 or any other device by which persons are transported, for hire, on a highway or by
8 rail, water, air, or guidewire within this state, but does not include such a device
9 while providing transportation in interstate commerce.

10 **SECTION 21.** 101.123 (1) (eg) of the statutes is created to read:

11 101.123 (1) (eg) "Public place" means any enclosed place that is open to the
12 public, regardless of whether a fee is charged or a place to which the public has lawful
13 access or may be invited.

14 **SECTION 22.** 101.123 (1) (f) of the statutes is amended to read:

15 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
16 ~~with a seating capacity of more than 50 persons.~~

17 **SECTION 23.** 101.123 (1) (g) of the statutes is amended to read:

18 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
19 sales is the principal business conducted, ~~except a tavern operating under a "Class~~
20 ~~B" intoxicating liquor license or Class "B" fermented malt beverages license, and~~
21 ~~except bowling centers.~~

22 **SECTION 24.** 101.123 (1) (gm) of the statutes is repealed.

23 **SECTION 25.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
24 and amended to read:

25 101.123 (1) (h) (intro.) "Smoking" means carrying any of the following:

1 1. Burning or holding a lighted cigar, cigarette, pipe, or any other lighted
2 smoking equipment containing tobacco products.

3 **SECTION 26.** 101.123 (1) (h) 2. of the statutes is created to read:

4 101.123 (1) (h) 2. Inhaling or exhaling smoke from a lighted cigar, cigarette,
5 pipe, or other lighted smoking equipment containing tobacco products.

6 **SECTION 27.** 101.123 (1) (hm) of the statutes is created to read:

7 101.123 (1) (hm) "Sports arena" means any stadium, pavilion, gymnasium,
8 swimming pool, skating rink, bowling center, or other building where spectator
9 sporting events are held.

10 **SECTION 28.** 101.123 (1) (i) of the statutes is amended to read:

11 101.123 (1) (i) "State institution" means ~~a prison,~~ a mental health institute,
12 as defined in s. 51.01 (12) ~~or,~~ a center for the developmentally disabled, as defined
13 in s. 51.01 (3), or a secure mental health facility at which persons are committed
14 under s. 980.06.

15 **SECTION 29.** 101.123 (1) (id) of the statutes is created to read:

16 101.123 (1) (id) "Substantial wall" means a wall where at least 25 percent of
17 the surface area of the wall is not part of an opening that may be used to allow air
18 in from the outside.

19 **SECTION 30.** 101.123 (1) (im) of the statutes is created to read:

20 101.123 (1) (im) "Tavern" means an establishment, other than a restaurant,
21 that holds a "Class B" intoxicating liquor license or Class "B" fermented malt
22 beverages license.

23 **SECTION 31.** 101.123 (1) (ip) of the statutes is created to read:

1 101.123 (1) (ip) "Treatment facility" means a publicly or private operated
2 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
3 or developmentally disabled persons.

4 **SECTION 32.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

5 101.123 (2) (title) PROHIBITION AGAINST SMOKING.

6 **SECTION 33.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

7 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in
8 any of the following enclosed places:

9 **SECTION 34.** 101.123 (2) (a) 1. of the statutes is repealed.

10 **SECTION 35.** 101.123 (2) (a) 1g. of the statutes is created to read:

11 101.123 (2) (a) 1g. The state capitol.

12 **SECTION 36.** 101.123 (2) (a) 1m. of the statutes is created to read:

13 101.123 (2) (a) 1m. Residence halls or dormitories owned or operated by a
14 college or university.

15 **SECTION 37.** 101.123 (2) (a) 1r. of the statutes is created to read:

16 101.123 (2) (a) 1r. Day care centers.

17 **SECTION 38.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

18 101.123 (2) (a) 4. Theaters ~~except as provided in sub. (3) (L).~~

19 **SECTION 39.** 101.123 (2) (a) 5. of the statutes is repealed.

20 **SECTION 40.** 101.123 (2) (a) 5m. of the statutes is created to read:

21 101.123 (2) (a) 5m. Correctional facilities.

22 **SECTION 41.** 101.123 (2) (a) 5t. of the statutes is created to read:

23 101.123 (2) (a) 5t. State institutions.

24 **SECTION 42.** 101.123 (2) (a) 6. of the statutes is repealed.

25 **SECTION 43.** 101.123 (2) (a) 7m. of the statutes is created to read:

1 101.123 (2) (a) 7m. Taverns.

2 **SECTION 44.** 101.123 (2) (a) 7r. of the statutes is created to read:

3 101.123 (2) (a) 7r. Private clubs.

4 **SECTION 45.** 101.123 (2) (a) 8d. of the statutes is created to read:

5 101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

6 **SECTION 46.** 101.123 (2) (a) 8g. of the statutes is created to read:

7 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

8 **SECTION 47.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

9 101.123 (2) (a) 9. All enclosed places, other than those listed in subds. 1. to 8r.,
10 that are places of employment or that are public places.

11 **SECTION 48.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
12 and amended to read:

13 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State, county, city,~~
14 village, or town ~~building buildings~~.

15 **SECTION 49.** 101.123 (2) (am) of the statutes is repealed.

16 **SECTION 50.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
17 amended to read:

18 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
19 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

20 **SECTION 51.** 101.123 (2) (b) of the statutes is repealed.

21 **SECTION 52.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
22 and amended to read:

23 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
24 on Anywhere on the premises, ~~indoors or outdoors~~, of a day care center when children

1 who are receiving day care services are present. When such children are not present,
2 the prohibition under subd. 5. applies.

3 **SECTION 53.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
4 amended to read:

5 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
6 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ Anywhere
7 on the grounds of a Type 1 juvenile correctional facility.

8 **SECTION 54.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
9 amended to read:

10 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
11 ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned
12 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
13 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

14 **SECTION 55.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

15 **SECTION 56.** 101.123 (2) (d) (intro.) of the statutes is created to read:

16 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
17 locations:

18 **SECTION 57.** 101.123 (2) (d) 5. of the statutes is created to read:

19 101.123 (2) (d) 5. A location that is less than a reasonable distance from any
20 of the following:

21 a. An operable entrance to or from an enclosed place listed in sub. (2) (a) 3. to
22 9. or a sports arena.

23 b. An openable window that is part of an enclosed place listed in sub. (2) (a) 3.
24 to 9. or a sports arena.

1 c. An opening through which air enters, for the purpose of ventilation into an
2 enclosed place listed in sub. (2) (a) 3. to 9., or a sports arena.

3 **SECTION 58.** 101.123 (2) (dm) of the statutes is created to read:

4 101.123 (2) (dm) Paragraph (d) 3. applies in lieu of par. (d) 5. to smoking outside
5 of a Type 1 juvenile correctional facility.

6 **SECTION 59.** 101.123 (2) (e) of the statutes is created to read:

7 101.123 (2) (e) No person may smoke in any of the following:

8 1. A sports arena.

9 2. A bus shelter.

10 3. A public conveyance.

11 **SECTION 60.** 101.123 (2m) of the statutes is created to read:

12 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
13 may allow any person to smoke in violation of sub. (2) at a location that is under the
14 control or direction of the person in charge.

15 (b) No person in charge may provide matches, ashtrays, or other equipment for
16 smoking at the location where smoking is prohibited.

17 (c) A person in charge shall make reasonable efforts to prohibit persons from
18 smoking at a location where smoking is prohibited by doing all of the following:

19 1. Posting signs setting forth the prohibition and providing other appropriate
20 notification and information concerning the prohibition.

21 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,
22 or private club.

23 3. Asking a person who is smoking to refrain from smoking and, if the person
24 refuses to do so, asking the person to leave the location.

(d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.

(e) A person in charge may take measures in addition to those listed in pars. (b) and (c) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

SECTION 61. 101.123 (3) (intro.) of the statutes is amended to read:

101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against~~ smoking in sub. (2) (a) does not apply to the following places:

SECTION 62. 101.123 (3) (a) to (gr) of the statutes are repealed.

SECTION 63. 101.123 (3) (h) of the statutes is created to read:

101.123 (3) (h) A private residence.

SECTION 64. 101.123 (3) (i) of the statutes is created to read:

101.123 (3) (i) A room used by only one person in an assisted living facility as his or her residence.

SECTION 65. 101.123 (3) (j) of the statutes is created to read:

101.123 (3) (j) A room in an assisted living facility in which 2 or more persons reside if every person who lives in that room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.

SECTION 66. 101.123 (3) (k) of the statutes is created to read:

101.123 (3) (k) A room in a lodging establishment that has been designated as a room where smoking is allowed, as provided under sub. (3m).

SECTION 67. ~~101.123 (3) (L) of the statutes is created to read:~~

1 ~~101.123 (3) (L) Any stage of a theater when the stage is being used for a~~
2 ~~theatrical performance and the smoking is part of the performance.~~

3 **SECTION 68.** 101.123 (3m) of the statutes is created to read:

4 **101.123 (3m) LODGING.** (a) Except as provided in par. (b), the owner of a lodging
5 establishment may designate not more than 25 percent of the guest rooms in the
6 lodging establishment as guest rooms in which smoking is permitted.

7 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging
8 establishment may designate one guest room as a guest room in which smoking is
9 permitted.

10 **SECTION 69.** 101.123 (4) of the statutes is repealed.

11 **SECTION 70.** 101.123 (4m) (title) of the statutes is created to read:

12 **101.123 (4m) (title) LOCAL AUTHORITY.**

13 **SECTION 71.** 101.123 (5) of the statutes is repealed.

14 **SECTION 72.** 101.123 (6) of the statutes is amended to read:

15 **101.123 (6) UNIFORM SIGNS.** The department shall, by rule, specify uniform
16 dimensions and other characteristics of the signs used to designate smoking areas
17 required under sub. (2m). These rules may not require the use of signs that are more
18 expensive than is necessary to accomplish their purpose.

19 **SECTION 73.** 101.123 (7) of the statutes is amended to read:

20 **101.123 (7) SIGNS FOR STATE AGENCIES.** The department shall arrange with the
21 department of administration to have the signs prepared and made available to state
22 agencies for use in state facilities that set forth the prohibition against smoking.

23 **SECTION 74.** 101.123 (8) (a) of the statutes is repealed and recreated to read:

24 **101.123 (8) (a)** Any person who violates sub. (2) shall be subject to a forfeiture
25 as follows:

1. Not less than \$25 nor more than \$50 for the first violation.
2. Not less than \$50 nor more than \$100 for the 2nd violation.
3. Not less than \$100 nor more than \$250 for the 3rd or any subsequent violation.

SECTION 75. 101.123 (8) (b) of the statutes is repealed.

SECTION 76. 101.123 (8) (c) of the statutes is repealed.

SECTION 77. 101.123 (8) (d) of the statutes is created to read:

101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to a forfeiture as follows:

1. Not less than \$50 nor more than \$100 for the first violation.
2. Not less than \$100 nor more than \$200 for the 2nd violation.
3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent violation.

SECTION 78. 101.123 (8) (e) of the statutes is created to read:

101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

SECTION 79. 165.60 of the statutes is amended to read:

165.60 Law enforcement. The department of justice is authorized to enforce ss. 101.123 (2), ~~(5)~~, (2m), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of those duties. This section does not deprive or relieve sheriffs, constables, and other local police officers of the power and duty to enforce those sections, and those officers shall likewise enforce those sections.

SECTION 80. 165.755 (1) (b) of the statutes is amended to read:

1 165.755 (1) (b) A court may not impose the crime laboratories and drug law
2 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
3 ~~(bm), (br), or (bv) or (5) (b) or (2m)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681
4 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
5 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
6 violation, or for a violation of a state law or municipal or county ordinance involving
7 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
8 violation under s. 347.48 (2m).

9 **SECTION 81.** 302.46 (1) (a) of the statutes is amended to read:

10 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
11 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
12 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv) or (5) (2m)~~, or for a first violation of s. 23.33 (4c)
13 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
14 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
15 the time of the violation, or for a violation of state laws or municipal or county
16 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
17 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
18 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
19 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
20 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
21 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
22 surcharge in proportion to the suspension.

23 **SECTION 82.** 460.01 (5) of the statutes is amended to read:

1 460.01 (5) "Physician's office" has the meaning given in s. 101.123 (1) (dg)
2 means a place, other than a residence or a hospital, that is used primarily to provide
3 medical care and treatment.

4 **SECTION 83.** 757.05 (1) (a) of the statutes is amended to read:

5 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
6 state law or for a violation of a municipal or county ordinance except for a violation
7 of s. 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5)~~ (2m), or for a first violation
8 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
9 who committed the violation had a blood alcohol concentration of 0.08 or more but
10 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
11 or county ordinances involving nonmoving traffic violations, violations under s.
12 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
13 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
14 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
15 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
16 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
17 in proportion to the suspension.

18 **SECTION 84.** 814.63 (1) (c) of the statutes is amended to read:

19 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
20 101.123 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5)~~ (2m), for a first violation of s. 23.33
21 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
22 committed the violation had a blood alcohol concentration of 0.08 or more but less
23 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
24 safety belt use violation under s. 347.48 (2m).

25 **SECTION 9310. Initial applicability; Commerce.**

(1) The treatment of sections 77.52 (2) (ag) 39. (intro.), 101.123 (1) (a), (ab), (ac), (aj), (ak), (am), (ar), (b), (bg), (bm), (bn), (br), (c), (d), (dg), (dj), (dm) (dn), (e), (eg), (f), (g), (gm), (h), (hm), (i), (id), (im), and (ip), (2) (title), (a) (intro.), 1., 1g., 1m., 1r., 4., 5., 5m., 5t., 6., 7m., 7r., 8d., 8g., 9., and 10., (am), (ar), (b), (bm), (br), (bv), (c), (d) (intro.) and 5., (dm), (e), and (f), (2m), (3) (intro.), (a) to (gr), (h), (i), (j), (k), (l), (3m), (4), (4m) (title), (5), (6), (7), and (8) (a), (b), (c), (d), and (e), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a), and 814.63 (1) (c) of the statutes, ~~the renumbering and amendment of section 101.123 (1) (h) of the statutes, and the creation of section 101.123 (1) (h) 2. of the statutes,~~ ^{and} first ^{and} apply ^{and} to violations occurring on the effective date of this subsection.

SECTION 9410. Effective dates; Commerce.

(1) The treatment of sections 77.52 (2) (ag) 39. (intro.), 101.123 (1) (a), (ab), (ac), (aj), (ak), (am), (ar), (b), (bg), (bm), (bn), (br), (c), (d), (dg), (dj), (dm) (dn), (e), (eg), (f), (g), (gm), (h), (hm), (i), (id), (im), and (ip), (2) (title), (a) (intro.), 1., 1g., 1m., 1r., 4., 5., 5m., 5t., 6., 7m., 7r., 8d., 8g., 9., and 10., (am), (ar), (b), (bm), (br), (bv), (c), (d) (intro.) and 5., (dm), (e), and (f), (2m), (3) (intro.), (a) to (gr), (h), (i), (j), (k), (l), (3m), (4), (4m) (title), (5), (6), (7), and (8) (a), (b), (c), (d), and (e), 165.60, 165.755 (1) (b), 302.46 (1) (a), 460.01 (5), 757.05 (1) (a), and 814.63 (1) (c) of the statutes, ~~the renumbering and amendment of section 101.123 (1) (h) of the statutes, and the creation of section 101.123 (1) (h) 2. of the statutes,~~ ^{and} take ⁵ effect on the first day of the 3rd month beginning after publication.

(END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1646/lins
MGG:.....

Insert 7-5

SECTION 1. 101.123 (1) (h) of the statutes is amended to read:

101.123 (1) (h) ^(intro.) "Smoking" means ~~carrying a lighted~~ burning or holding, or

inhaling or exhaling smoke from, any of the following items containing tobacco:

1. A lighted cigar,

2. A lighted cigarette, ²

3. A lighted pipe ~~or any~~ ²

4. Any other lighted smoking equipment.

History: 1983 a. 211; 1985 a. 332 s. 253; 1987 a. 161 s. 13m; 1987 a. 403 s. 256; 1989 a. 97, 107, 251, 336; 1991 a. 28, 39, 130; 1993 a. 27, 313; 1995 a. 27 ss. 3661, 9126 (19); 1995 a. 77, 201, 404; 1999 a. 9, 72; 2001 a. 16; 2003 a. 268; 2005 a. 344; 2007 a. 20 s. 9121 (6) (a).

*renumbered 101.123
(1) (h)
(intro.) and*

*change
component*



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1646/1
MGG:kjf&wlj:jf

DOA:.....Willing, BB0505 - Restrictions on smoking

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

HEALTH

Current law prohibits smoking in mass transit vehicles and specific enclosed, indoor locations, including the following:

1. Inpatient health care facilities, such as community based-residential facilities and nursing homes.
2. Prisons and jails.
3. Retail establishments.
4. Restaurants.
5. Governmental buildings.

Except for hospitals, school buses, day care centers where children are present, and a few other places, a smoking area may be designated by the person who is in charge of that location. For example, the person in charge of a business is the owner of the business and the person in charge of a prison is the state secretary of corrections.

Under the bill, smoking areas at indoor locations may no longer be designated resulting in a complete ban on indoor smoking at those locations with exceptions for private residences, a limited number of designated rooms in lodging establishments, and certain residence rooms in assisted living facilities. In addition to the specific indoor locations listed under current law, the bill prohibits smoking in any public

place or place of employment. The bill defines "a place of employment" to be any indoor place that employees normally frequent during the course of employment, such as an office, a work area, an employee lounge, a restroom, a conference room, a meeting room, a classroom, or a hallway. The bill also defines a "public place" to be a place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited. In addition, the bill defines an "enclosed place" for purposes of determining at what locations smoking is prohibited. An enclosed place must have a roof and at least two walls.

Current law provides exemptions from the prohibition against smoking for bowling centers, taverns, halls used for private functions, rooms in which the main occupants are smokers, and areas of facilities that are used to manufacture or assemble goods, products, or merchandise. This bill eliminates these exemptions.

Current law allows smoking in any restaurant that has a seating capacity of 50 individuals or less, or that holds a liquor license, if the sale of alcohol beverages accounts for more than 50 percent of the restaurant's receipts. This bill prohibits smoking in any restaurant regardless of seating capacity or the number of liquor sale receipts.

Current law allows smoking in any tavern holding a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license issued by a municipality. This bill prohibits smoking in any tavern. The bill also specifically prohibits smoking in private clubs.

Under current law, smoking is prohibited outside in limited instances. These include within a certain distance of the state capitol building, dormitories that are owned or operated by the University of Wisconsin, and day care centers where children are present. This bill makes no changes to these specific prohibitions, and adds a general prohibition against smoking outside within less than a reasonable distance from any entrance into a building, an openable window, or a ventilation opening that draws air inside.

The bill also specifically prohibits smoking in sports arenas and bus shelters, regardless of whether they meet the definition of "enclosed place."

Current law does not limit the authority of any county, city, village, or town to enact smoking ordinances that protect the public's health and comfort. This bill makes no change in this provision.

This bill requires that persons in charge of places where smoking is prohibited enforce the prohibitions by taking certain steps to ensure compliance, such as asking the person to leave or refusing to serve the person if the place is a restaurant or tavern. This bill imposes forfeitures on persons in charge who fail to take these measures.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 77.52 (2) (ag) 39. (intro.) of the statutes is amended to read:

2 77.52 (2) (ag) 39. (intro.) Equipment in offices, business facilities, schools, and
3 hospitals but not in residential facilities including personal residences, apartments,
4 long-term care facilities, as defined under s. 16.009 (1) (em), ~~state institutions, as~~
5 ~~defined under s. 101.123 (1) (i)~~ prisons, mental health institutes, as defined in s.
6 51.01 (12), centers for the developmentally disabled, as defined in s. 51.01 (3), Type
7 1 juvenile correctional facilities, as defined in s. 938.02 (19), or similar facilities
8 including, by way of illustration but not of limitation, all of the following:

9 **SECTION 2.** 101.123 (1) (a) of the statutes is renumbered 101.123 (1) (ae).

10 **SECTION 3.** 101.123 (1) (ab) of the statutes is created to read:

11 101.123 (1) (ab) “Assisted living facility” means a community-based
12 residential facility, as defined in s. 50.01 (1g), a residential care apartment complex,
13 as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

14 **SECTION 4.** 101.123 (1) (ac) of the statutes is created to read:

15 101.123 (1) (ac) “Correctional facility” means any of the following:

16 1. A state prison, as defined or named in s. 302.01, except a correctional
17 institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner’s
18 place of residence and no one is employed there to ensure the prisoner’s
19 incarceration.

20 2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile
21 correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional
22 facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility
23 is a private residence in which the juvenile is placed and no one is employed there
24 to ensure that the juvenile remains in custody.

1 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work
2 camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under
3 s. 302.30.

4 **SECTION 5.** 101.123 (1) (aj) of the statutes is created to read:

5 101.123 (1) (aj) Notwithstanding s. 101.01 (5), "employment" means any trade,
6 occupation, or process of manufacture or any method of carrying on such trade,
7 occupation, or process of manufacture in which any person may be engaged.

8 **SECTION 6.** 101.123 (1) (ak) of the statutes is created to read:

9 101.123 (1) (ak) "Enclosed place" means a structure or area that has all of the
10 following:

11 1. A roof or overhead covering.

12 2. Two or more substantial walls, regardless of whether the walls are removed
13 and replaced on a temporary basis.

14 **SECTION 7.** 101.123 (1) (am) of the statutes is repealed.

15 **SECTION 8.** 101.123 (1) (ar) of the statutes is amended to read:

16 101.123 (1) (ar) "Immediate vicinity of the state capitol" means the area
17 directly adjacent to the state capitol building, as determined by rule of the
18 department of administration. "Immediate vicinity of the state capitol" does not
19 include any location that is more than ~~one fathom~~ six feet from the state capitol
20 building.

21 **SECTION 9.** 101.123 (1) (b) of the statutes is amended to read:

22 101.123 (1) (b) "Inpatient health care facility" means a hospital, as defined in
23 s. 50.33 (2), a county home established under s. 49.70, a county infirmary established
24 under s. 49.72 ~~or a community-based residential facility or, a nursing home licensed~~

1 ~~under s. 50.03, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a~~
2 ~~Wisconsin veteran's home under s. 45.50, or a treatment facility.~~

3 **SECTION 10.** 101.123 (1) (bg) of the statutes is repealed.

4 **SECTION 11.** 101.123 (1) (bm) of the statutes is repealed.

5 **SECTION 12.** 101.123 (1) (bn) of the statutes is created to read:

6 101.123 (1) (bn) "Lodging establishment" means any of the following:

7 1. A bed and breakfast establishment, as defined in s. 254.61 (1).

8 2. A hotel, as defined in s. 254.61 (3).

9 3. A tourist rooming house, as defined in s. 254.61 (6).

10 **SECTION 13.** 101.123 (1) (br) of the statutes is repealed.

11 **SECTION 14.** 101.123 (1) (c) of the statutes is repealed.

12 **SECTION 15.** 101.123 (1) (d) of the statutes is amended to read:

13 101.123 (1) (d) "Person in charge" means the person, or his or her agent, who
14 ultimately controls, governs or directs the activities aboard a public conveyance or
15 ~~within a place~~ at a location where smoking is prohibited or regulated under this
16 section, ~~regardless of the person's status as owner or lessee.~~

17 **SECTION 16.** 101.123 (1) (dg) of the statutes is repealed.

18 **SECTION 17.** 101.123 (1) (dj) of the statutes is created to read:

19 101.123 (1) (dj) Notwithstanding s. 101.01 (11), "place of employment" means
20 any enclosed place that employees normally frequent during the course of
21 employment, including an office, a work area, an elevator, an employee lounge, a
22 restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a
23 lobby, a common area, a vehicle, or an employee cafeteria.

24 **SECTION 18.** 101.123 (1) (dm) of the statutes is renumbered 77.51 (11m).

25 **SECTION 19.** 101.123 (1) (dn) of the statutes is created to read:

1 101.123 (1) (dn) "Private club" means a facility used by an organization that
2 limits its membership and is organized for a recreational, fraternal, social, patriotic,
3 political, benevolent, or athletic purpose.

4 **SECTION 20.** 101.123 (1) (e) of the statutes is amended to read:

5 101.123 (1) (e) "Public conveyance" means a mass transit ~~vehieles~~ vehicle as
6 defined by in s. 340.01 (28m) and, a school buses bus as defined by in s. 340.01 (56),
7 or any other device by which persons are transported, for hire, on a highway or by
8 rail, water, air, or guidewire within this state, but does not include such a device
9 while providing transportation in interstate commerce.

10 **SECTION 21.** 101.123 (1) (eg) of the statutes is created to read:

11 101.123 (1) (eg) "Public place" means any enclosed place that is open to the
12 public, regardless of whether a fee is charged or a place to which the public has lawful
13 access or may be invited.

14 **SECTION 22.** 101.123 (1) (f) of the statutes is amended to read:

15 101.123 (1) (f) "Restaurant" means an establishment as defined in s. 254.61 (5)
16 ~~with a seating capacity of more than 50 persons.~~

17 **SECTION 23.** 101.123 (1) (g) of the statutes is amended to read:

18 101.123 (1) (g) "Retail establishment" means any store or shop in which retail
19 sales is the principal business conducted, ~~except a tavern operating under a "Class~~
20 ~~B" intoxicating liquor license or Class "B" fermented malt beverages license, and~~
21 ~~except bowling centers.~~

22 **SECTION 24.** 101.123 (1) (gm) of the statutes is repealed.

23 **SECTION 25.** 101.123 (1) (h) of the statutes is renumbered 101.123 (1) (h) (intro.)
24 and amended to read:

1 101.123 (1) (h) (intro.) "Smoking" means carrying a lighted burning or holding,
2 or inhaling or exhaling smoke from, any of the following items containing tobacco:

3 1. A lighted cigar,

4 2. A lighted cigarette,

5 3. A lighted pipe or any,

6 4. Any other lighted smoking equipment.

7 **SECTION 26.** 101.123 (1) (hm) of the statutes is created to read:

8 101.123 (1) (hm) "Sports arena" means any stadium, pavilion, gymnasium,
9 swimming pool, skating rink, bowling center, or other building where spectator
10 sporting events are held.

11 **SECTION 27.** 101.123 (1) (i) of the statutes is amended to read:

12 101.123 (1) (i) "State institution" means ~~a prison,~~ a mental health institute,
13 as defined in s. 51.01 (12) ~~or,~~ a center for the developmentally disabled, as defined
14 in s. 51.01 (3), or a secure mental health facility at which persons are committed
15 under s. 980.06.

16 **SECTION 28.** 101.123 (1) (id) of the statutes is created to read:

17 101.123 (1) (id) "Substantial wall" means a wall where at least 25 percent of
18 the surface area of the wall is not part of an opening that may be used to allow air
19 in from the outside.

20 **SECTION 29.** 101.123 (1) (im) of the statutes is created to read:

21 101.123 (1) (im) "Tavern" means an establishment, other than a restaurant,
22 that holds a "Class B" intoxicating liquor license or Class "B" fermented malt
23 beverages license.

24 **SECTION 30.** 101.123 (1) (ip) of the statutes is created to read:

1 101.123 (1) (ip) "Treatment facility" means a publicly or private operated
2 inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill,
3 or developmentally disabled persons.

4 **SECTION 31.** 101.123 (2) (title) of the statutes is repealed and recreated to read:

5 101.123 (2) (title) PROHIBITION AGAINST SMOKING.

6 **SECTION 32.** 101.123 (2) (a) (intro.) of the statutes is amended to read:

7 101.123 (2) (a) (intro.) Except as provided in sub. (3), no person may smoke in
8 any of the following enclosed places:

9 **SECTION 33.** 101.123 (2) (a) 1. of the statutes is repealed.

10 **SECTION 34.** 101.123 (2) (a) 1g. of the statutes is created to read:

11 101.123 (2) (a) 1g. The state capitol.

12 **SECTION 35.** 101.123 (2) (a) 1m. of the statutes is created to read:

13 101.123 (2) (a) 1m. Residence halls or dormitories owned or operated by a
14 college or university.

15 **SECTION 36.** 101.123 (2) (a) 1r. of the statutes is created to read:

16 101.123 (2) (a) 1r. Day care centers.

17 **SECTION 37.** 101.123 (2) (a) 4. of the statutes is repealed and recreated to read:

18 101.123 (2) (a) 4. Theaters.

19 **SECTION 38.** 101.123 (2) (a) 5. of the statutes is repealed.

20 **SECTION 39.** 101.123 (2) (a) 5m. of the statutes is created to read:

21 101.123 (2) (a) 5m. Correctional facilities.

22 **SECTION 40.** 101.123 (2) (a) 5t. of the statutes is created to read:

23 101.123 (2) (a) 5t. State institutions.

24 **SECTION 41.** 101.123 (2) (a) 6. of the statutes is repealed.

25 **SECTION 42.** 101.123 (2) (a) 7m. of the statutes is created to read:

1 101.123 (2) (a) 7m. Taverns.

2 **SECTION 43.** 101.123 (2) (a) 7r. of the statutes is created to read:

3 101.123 (2) (a) 7r. Private clubs.

4 **SECTION 44.** 101.123 (2) (a) 8d. of the statutes is created to read:

5 101.123 (2) (a) 8d. Common areas of multiple-unit residential properties.

6 **SECTION 45.** 101.123 (2) (a) 8g. of the statutes is created to read:

7 101.123 (2) (a) 8g. Lodging establishments except as provided in sub. (3) (k).

8 **SECTION 46.** 101.123 (2) (a) 9. of the statutes is repealed and recreated to read:

9 101.123 (2) (a) 9. All enclosed places, other than those listed in subds. 1. to 8r.,
10 that are places of employment or that are public places.

11 **SECTION 47.** 101.123 (2) (a) 10. of the statutes is renumbered 101.123 (2) (a) 8r.
12 and amended to read:

13 101.123 (2) (a) 8r. ~~Any enclosed, indoor area of a state, State,~~ county, city,
14 village, or town ~~building buildings~~.

15 **SECTION 48.** 101.123 (2) (am) of the statutes is repealed.

16 **SECTION 49.** 101.123 (2) (ar) of the statutes is renumbered 101.123 (2) (d) 1. and
17 amended to read:

18 101.123 (2) (d) 1. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
19 ~~in the state capitol building or in~~ In the immediate vicinity of the state capitol.

20 **SECTION 50.** 101.123 (2) (b) of the statutes is repealed.

21 **SECTION 51.** 101.123 (2) (bm) of the statutes is renumbered 101.123 (2) (d) 2.
22 and amended to read:

23 101.123 (2) (d) 2. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
24 ~~on~~ Anywhere on the premises, ~~indoors or outdoors~~, of a day care center when children

1 who are receiving day care services are present. When such children are not present,
2 the prohibition under subd. 5. applies.

3 **SECTION 52.** 101.123 (2) (br) of the statutes is renumbered 101.123 (2) (d) 3. and
4 amended to read:

5 101.123 (2) (d) 3. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
6 ~~in any enclosed, indoor area of a Type 1 juvenile correctional facility or on~~ Anywhere
7 on the grounds of a Type 1 juvenile correctional facility.

8 **SECTION 53.** 101.123 (2) (bv) of the statutes is renumbered 101.123 (2) (d) 4. and
9 amended to read:

10 101.123 (2) (d) 4. ~~Notwithstanding par. (a) and sub. (3), no person may smoke~~
11 ~~in~~ A location that is 25 feet or less from a residence hall or dormitory that is owned
12 or operated by the Board of Regents of the University of Wisconsin System ~~or in any~~
13 ~~location that is 25 feet or less from such a residence hall or dormitory.~~

14 **SECTION 54.** 101.123 (2) (c) of the statutes is renumbered 101.123 (4m).

15 **SECTION 55.** 101.123 (2) (d) (intro.) of the statutes is created to read:

16 101.123 (2) (d) (intro.) No person may smoke at any of the following outdoor
17 locations:

18 **SECTION 56.** 101.123 (2) (d) 5. of the statutes is created to read:

19 101.123 (2) (d) 5. A location that is less than a reasonable distance from any
20 of the following:

21 a. An operable entrance to or from an enclosed place listed in sub. (2) (a) 3. to
22 9. or a sports arena.

23 b. An openable window that is part of an enclosed place listed in sub. (2) (a) 3.
24 to 9. or a sports arena.

1 c. An opening through which air enters, for the purpose of ventilation into an
2 enclosed place listed in sub. (2) (a) 3. to 9., or a sports arena.

3 **SECTION 57.** 101.123 (2) (dm) of the statutes is created to read:

4 101.123 (2) (dm) Paragraph (d) 3. applies in lieu of par. (d) 5. to smoking outside
5 of a Type 1 juvenile correctional facility.

6 **SECTION 58.** 101.123 (2) (e) of the statutes is created to read:

7 101.123 (2) (e) No person may smoke in any of the following:

8 1. A sports arena.

9 2. A bus shelter.

10 3. A public conveyance.

11 **SECTION 59.** 101.123 (2m) of the statutes is created to read:

12 101.123 (2m) RESPONSIBILITY OF PERSONS IN CHARGE. (a) No person in charge
13 may allow any person to smoke in violation of sub. (2) at a location that is under the
14 control or direction of the person in charge.

15 (b) No person in charge may provide matches, ashtrays, or other equipment for
16 smoking at the location where smoking is prohibited.

17 (c) A person in charge shall make reasonable efforts to prohibit persons from
18 smoking at a location where smoking is prohibited by doing all of the following:

19 1. Posting signs setting forth the prohibition and providing other appropriate
20 notification and information concerning the prohibition.

21 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern,
22 or private club.

23 3. Asking a person who is smoking to refrain from smoking and, if the person
24 refuses to do so, asking the person to leave the location.

1 (d) If a person refuses to leave a location after being requested to do so as
2 provided in par. (c) 3., the person in charge shall immediately notify an appropriate
3 law enforcement agency of the violation.

4 (e) A person in charge may take measures in addition to those listed in pars.
5 (b) and (c) to prevent persons from being exposed to others who are smoking or to
6 further ensure compliance with this section.

7 **SECTION 60.** 101.123 (3) (intro.) of the statutes is amended to read:

8 101.123 (3) EXCEPTIONS. (intro.) ~~The regulation of prohibition against~~ smoking
9 in sub. (2) (a) does not apply to the following places:

10 **SECTION 61.** 101.123 (3) (a) to (gr) of the statutes are repealed.

11 **SECTION 62.** 101.123 (3) (h) of the statutes is created to read:

12 101.123 (3) (h) A private residence.

13 **SECTION 63.** 101.123 (3) (i) of the statutes is created to read:

14 101.123 (3) (i) A room used by only one person in an assisted living facility as
15 his or her residence.

16 **SECTION 64.** 101.123 (3) (j) of the statutes is created to read:

17 101.123 (3) (j) A room in an assisted living facility in which 2 or more persons
18 reside if every person who lives in that room smokes and each of those persons has
19 made a written request to the person in charge of the assisted living facility to be
20 placed in a room where smoking is allowed.

21 **SECTION 65.** 101.123 (3) (k) of the statutes is created to read:

22 101.123 (3) (k) A room in a lodging establishment that has been designated as
23 a room where smoking is allowed, as provided under sub. (3m).

24 **SECTION 66.** 101.123 (3m) of the statutes is created to read:

1 101.123 (3m) LODGING. (a) Except as provided in par. (b), the owner of a lodging
2 establishment may designate not more than 25 percent of the guest rooms in the
3 lodging establishment as guest rooms in which smoking is permitted.

4 (b) If a lodging establishment has less than 4 rooms, the owner of the lodging
5 establishment may designate one guest room as a guest room in which smoking is
6 permitted.

7 **SECTION 67.** 101.123 (4) of the statutes is repealed.

8 **SECTION 68.** 101.123 (4m) (title) of the statutes is created to read:

9 101.123 (4m) (title) LOCAL AUTHORITY.

10 **SECTION 69.** 101.123 (5) of the statutes is repealed.

11 **SECTION 70.** 101.123 (6) of the statutes is amended to read:

12 101.123 (6) UNIFORM SIGNS. The department shall, by rule, specify uniform
13 dimensions and other characteristics of the signs used to designate smoking areas
14 required under sub. (2m). These rules may not require the use of signs that are more
15 expensive than is necessary to accomplish their purpose.

16 **SECTION 71.** 101.123 (7) of the statutes is amended to read:

17 101.123 (7) SIGNS FOR STATE AGENCIES. The department shall arrange with the
18 department of administration to have ~~the~~ signs prepared and made available to state
19 agencies for use in state facilities that set forth the prohibition against smoking.

20 **SECTION 72.** 101.123 (8) (a) of the statutes is repealed and recreated to read:

21 101.123 (8) (a) Any person who violates sub. (2) shall be subject to a forfeiture
22 as follows:

- 23 1. Not less than \$25 nor more than \$50 for the first violation.
- 24 2. Not less than \$50 nor more than \$100 for the 2nd violation.

1 3. Not less than \$100 nor more than \$250 for the 3rd or any subsequent
2 violation.

3 **SECTION 73.** 101.123 (8) (b) of the statutes is repealed.

4 **SECTION 74.** 101.123 (8) (c) of the statutes is repealed.

5 **SECTION 75.** 101.123 (8) (d) of the statutes is created to read:

6 101.123 (8) (d) Any person in charge who violates sub. (2m) shall be subject to
7 a forfeiture as follows:

8 1. Not less than \$50 nor more than \$100 for the first violation.

9 2. Not less than \$100 nor more than \$200 for the 2nd violation.

10 3. Not less than \$200 nor more than \$500 for the 3rd or any subsequent
11 violation.

12 **SECTION 76.** 101.123 (8) (e) of the statutes is created to read:

13 101.123 (8) (e) Each day that sub. (2m) is violated is a separate violation.

14 **SECTION 77.** 165.60 of the statutes is amended to read:

15 **165.60 Law enforcement.** The department of justice is authorized to enforce
16 ss. 101.123 (2), ~~(5), (2m)~~, and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03
17 (1m), and 945.04 (1m) and ch. 108 and is invested with the powers conferred by law
18 upon sheriffs and municipal police officers in the performance of those duties. This
19 section does not deprive or relieve sheriffs, constables, and other local police officers
20 of the power and duty to enforce those sections, and those officers shall likewise
21 enforce those sections.

22 **SECTION 78.** 165.755 (1) (b) of the statutes is amended to read:

23 165.755 (1) (b) A court may not impose the crime laboratories and drug law
24 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) ~~(a), (am) 1., (ar),~~
25 ~~(bm), (br), or (bv) or (5) (b) or (2m)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681

1 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation
2 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
3 violation, or for a violation of a state law or municipal or county ordinance involving
4 a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
5 violation under s. 347.48 (2m).

6 **SECTION 79.** 302.46 (1) (a) of the statutes is amended to read:

7 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
8 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
9 (2) (a), ~~(am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5)~~ (2m), or for a first violation of s. 23.33 (4c)
10 (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed
11 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
12 the time of the violation, or for a violation of state laws or municipal or county
13 ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m)
14 (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall
15 impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or
16 forfeiture imposed or \$10, whichever is greater. If multiple offenses are involved, the
17 court shall determine the jail surcharge on the basis of each fine or forfeiture. If a
18 fine or forfeiture is suspended in whole or in part, the court shall reduce the jail
19 surcharge in proportion to the suspension.

20 **SECTION 80.** 460.01 (5) of the statutes is amended to read:

21 460.01 (5) "Physician's office" ~~has the meaning given in s. 101.123 (1) (dg)~~
22 means a place, other than a residence or a hospital, that is used primarily to provide
23 medical care and treatment.

24 **SECTION 81.** 757.05 (1) (a) of the statutes is amended to read:

1 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
2 state law or for a violation of a municipal or county ordinance except for a violation
3 of s. 101.123 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, or for a first violation
4 of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person
5 who committed the violation had a blood alcohol concentration of 0.08 or more but
6 less than 0.1 at the time of the violation, or for a violation of state laws or municipal
7 or county ordinances involving nonmoving traffic violations, violations under s.
8 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be
9 imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent
10 of the fine or forfeiture imposed. If multiple offenses are involved, the penalty
11 surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine
12 or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced
13 in proportion to the suspension.

14 **SECTION 82.** 814.63 (1) (c) of the statutes is amended to read:

15 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
16 101.123 (2) ~~(a), (am) 1., (ar), (bm), (br), or (bv)~~ or ~~(5) (2m)~~, for a first violation of s. 23.33
17 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who
18 committed the violation had a blood alcohol concentration of 0.08 or more but less
19 than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b) or a
20 safety belt use violation under s. 347.48 (2m).

21 **SECTION 9310. Initial applicability; Commerce.**

22 (1) The treatment of sections 77.52 (2) (ag) 39. (intro.), 101.123 (1) (a), (ab), (ac),
23 (aj), (ak), (am), (ar), (b), (bg), (bm), (bn), (br), (c), (d), (dg), (dj), (dm) (dn), (e), (eg), (f),
24 (g), (gm), (h), (hm), (i), (id), (im), and (ip), (2) (title), (a) (intro.), 1., 1g., 1m., 1r., 4., 5.,
25 5m., 5t., 6., 7m., 7r., 8d., 8g., 9., and 10., (am), (ar), (b), (bm), (br), (bv), (c), (d) (intro.)

1 and 5., (dm), (e), and (f), (2m), (3) (intro.), (a) to (gr), (h), (i), (j), and (k), (3m), (4), (4m)
2 (title), (5), (6), (7), and (8) (a), (b), (c), (d), and (e), 165.60, 165.755 (1) (b), 302.46 (1)
3 (a), 460.01 (5), 757.05 (1) (a), and 814.63 (1) (c) of the statutes, first applies to
4 violations occurring on the effective date of this subsection.

5 **SECTION 9410. Effective dates; Commerce.**

6 (1) The treatment of sections 77.52 (2) (ag) 39. (intro.), 101.123 (1) (a), (ab), (ac),
7 (aj), (ak), (am), (ar), (b), (bg), (bm), (bn), (br), (c), (d), (dg), (dj), (dm) (dn), (e), (eg), (f),
8 (g), (gm), (h), (hm), (i), (id), (im), and (ip), (2) (title), (a) (intro.), 1., 1g., 1m., 1r., 4., 5.,
9 5m., 5t., 6., 7m., 7r., 8d., 8g., 9., and 10., (am), (ar), (b), (bm), (br), (bv), (c), (d) (intro.)
10 and 5., (dm), (e), and (f), (2m), (3) (intro.), (a) to (gr), (h), (i), (j), and (k), (3m), (4), (4m)
11 (title), (5), (6), (7), and (8) (a), (b), (c), (d), and (e), 165.60, 165.755 (1) (b), 302.46 (1)
12 (a), 460.01 (5), 757.05 (1) (a), and 814.63 (1) (c) of the statutes takes effect on the first
13 day of the 3rd month beginning after publication.

14 (END)